IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

OP.No. 32348 of 2002(A)

PETITIONER:

B. VIJAYAKUMAR, AGED 50, S/O. BALAKRISHNA MENON, RESIDING AT 'KRISHNA', V.P.NO.274/A, KODUGANUR, VATTIYOORKAVU, THIRUVANANTHAPURAM.

BY ADV. SRI.P.S.RAMESH KUMAR
SMT.ANNAMMA ABRAHAM
SMT.K.S.ANITHA

RESPONDENTS:
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1. THE SECRETARY, OFFICE OF THE STATE HOUSING BOARD, THIRUVANANTHAPURAM.

2. VIGILANCE OFFICER, KERALA STATE HOUSING BOARD, THIRUVANANTHAPURAM.

3. THE CHAIRMAN, KERALA STATE HOUSING BOARD, THIRUVANANTHAPURAM.

BY ADV. SRI.T.R.HARIKUMAR, SC, KSHB
SRI.P.C.IYPE, SC, KSHB
SRI.A.JAYASANKAR, SC KSHB, TVM

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO.32348/2002

ORDER IN C.M.P.NO. 54748/2002 IN OP NO.32348/2002

DISMISSED

28/03/2007 **SD/-ANTONY DOMINIC, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE REPORT DATED 27.7.2000 FILED BY THE REGIONAL ENGINEER OF THE KERALA STATE HOUSING BOARD.

EXT.P2: TRUE COPY OF THE PETITIONER'S SUSPENSIONORDER NO.HB 697/AD 3(a)/00/VIG DATED 5.8.2000 BY THE 1ST RESPONDENT, DATED 5.8.2000.

EXT.P3: TRUE COPY OF THE MEMO OF CHARGES ISSUED BY THE 1ST RESPONDENT VIDE NO.9668/AD 3(a)/2000, DATED 5.2.2001.

EXT.P4: TRUE COPY OF THE WRITTEN STATEMENT OF DEFENCE SUBMITTED BY THE PETITIONER DATED 5.3.2001.

EXT.P5: TRUE COPY OF THE LOAN APPLICATION (PRESCRIBED FORM) FOR THE MYTHRI HOUSING SCHEME.

EXT.P6: TRUE COPY OF THE 1ST RESPONDENT'S ORDER NO.9688/AD (3) 2000/VIG. DATED 14.8.2001 APPOINTING THE 2ND RESPONDENT AS AN ENQUIRY OFFICER.

EXT.P7: TRUE COPY OF THE 2ND RESPONDNET'S LETTER DATED 16.8.2001 ISSUED TO THE PETITIONER.

EXT.P8: TRUE COPY OF THE CIRCULAR NO.L6/269/96, DATED 14.8.1998 OF THE 1ST RESPONDENT.

EXT.P9: TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT, DATED 28.1.2002 AGAINST THE PETITIONER.

EXT.P10: TRUE COPY OF WRITTEN STATEMENT OF THE PETITIONER (BEARING NO DATE) IN REPLY TO EXT.P9.

EXT.P11: TRUE COPY OF THE REPRESENTATION DATED 14.1.2002 SENT TO THE 1ST RESPONDENT BY THE PETITIONER.

EXT.P12: TRUE COPY OF THE LETTER SENT BY THE PETITIONER TO THE 1ST RESPONDENT DATED 5.6.2002.

OP NO.32348/2002

EXT.P13: TRUE COPY OF JUDGMENT DATED 15.7.2002 IN OP NO.18377/2002 OF THIS HON'BLE COURT.

EXT.P14: TRUE COPY OF FINAL ORDER DATED 6.7.2002 PASSED BY 2ND RESPONDENT.

EXT.P15: TRUE COPY OF APPEAL DATED 27.7.2002 NO.CH 733/TVM/02 FILED BY PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P16: TRUE COPY OF JUDGMENT DATED 28.8.2002 IN OP NO.24289/2002 OF THIS HON'BLE COURT.

EXT.P17: TRUE COPY OF ORDER DATED 3.10.2002 ISSUED BY THE 3RD RESPONDENT.

//TRUE COPY//

ANTONY DOMINIC, J.
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O.P NO. 32348 OF 2002
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Dated this the 28th day of March, 2007

J U D G M E N T

The petitioner, an employee of the Kerala State Housing Board was proceeded against in a disciplinary proceedings and Ext.P3 is the Memo of Charges and the Statement of Allegations. He had submitted his written statement of defence and thereafter an enquiry was held by the Vigilance Officer of the Board. It is stated that the Enquiry Officer found him guilty of the charges and submitted a report to the Disciplinary Authority. However, the report of the Enquiry Officer is not placed on record and therefore I am not in a position to assess the findings as contained in the report.

2. Be that as it may, the disciplinary authority accepted the report of the Enquiry Officer and issued Ext.P9 Show Cause Notice, proposing to revert the petitioner to the post of Junior Superintendent and to recover Rs.28,956/- with interest, which is stated to have been the loss sustained by the Board. In response to the show cause notice Ext.P9, petitioner submitted Ext.P10

reply and finally by Ext.P14 order of the first respondent, Rs.28,956/- with 12% interest from 29/9/2001 was ordered to be recovered from him. It was also ordered to reduce him from the post of Accounts Officer to the post of Junior Superintendent for two years in terms of the provisions contained in the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. Petitioner pursued the matter in appeal before the Appellate Authority, the Chairman of the Board and finally by Ext.P17 order of the Chairman, though upheld the findings of misconduct against the petitioner, interfered with the punishment imposed by the first respondent. Accordingly, the Chairman ordered that the period of suspension will not be treated as duty of any kind, during the period of his service. It was also ordered that the reversion of the petitioner is set aside and the petitioner will have to remit the amount as ordered by the Disciplinary Authority. It is challenging these orders that this original petition is filed.

3. Although several contentions have been urged by the counsel for the petitioner on the merits of the findings of the Enquiry Officer as contained in the Enquiry Report and the order

of punishment imposed by the Disciplinary Authority as confirmed by the Appellate Authority, in the absence of the Enquiry Report on file, I am not in a position to deal with the contentions of the Counsel.

4. However, one of the contentions raised by the petitioner is that the enquiry was conducted by the Vigilance Officer, who is not the Disciplinary Authority of the petitioner and that, when the Enquiry Officer submitted his report to the Disciplinary Authority, before its acceptance, the Disciplinary Authority ought to have furnished a copy of the report of the Enquiry Officer to the petitioner in order to enable him to represent against the findings of the Enquiry Officer. Although this contention has been raised in the original petition, in the counter affidavit filed by the Board, all that they have stated in Para 6 is that the petitioner had not orally requested for a copy of the report and that a complaint of non furnishing of a copy of the report has not been mentioned in Ext.P10. Reading these two sentences in the counter affidavit which are totally evasive, I am to conclude that the averment of the petitioner that he has not

been supplied with a copy of the report is true. If that be the position, there is violation of the principles of natural justice and for that reason, from that stage of proceedings, further action taken against the petitioner will have to be invalidated.

5. For the above reason, I set aside Exts. P14 and P17 and direct the first respondent, the Disciplinary Authority to furnish a copy of the report of enquiry to the petitioner and to allow him an opportunity to submit his representations against the findings in the Enquiry report. Considering the representation so submitted by the petitioner, the Disciplinary Authority will be free to take fresh action against the petitioner based on the report of the Enquiry Officer and in the light of the objections of the petitioner.

6. During the course of the arguments, it was submitted by the counsel for the petitioner that his client will retire in two months time. Taking note of this, it is directed that further action as directed above shall be initiated and completed against the petitioner within a period of six weeks. I am also told that the amount ordered to be deposited by the petitioner pursuant to

Exhibits P14 and P17 has been deposited under protest. In view of the order setting aside Exhibits P14 and P17, the amount deposited by the petitioner will be appropriated based on the conclusion of the fresh action to be initiated by the Disciplinary Authority.

With the above observations, this original petition is disposed of.

ANTONY DOMINIC, JUDGE.

Rp